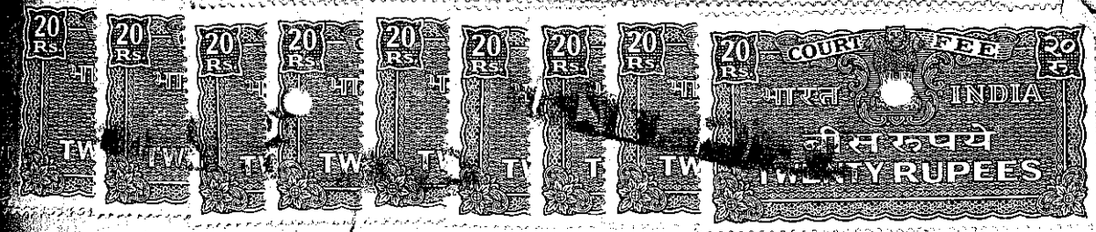


of 2001

(4)

IN THE HIGH COURT OF JUDICATURE MADHYA PRADESH JBP MP

Writ Petition No. 1041 of 1998

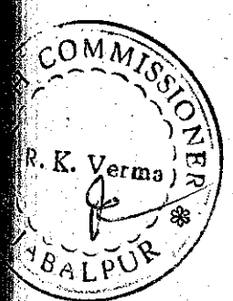
Petitioners: (1) M/s Raymond Limited Cement Division, Mahindra Towers, 'B' Wing, Pandurang Budhakar Marg, Warli, Mumbai.

Through - Shri Siddique Rahatjan son of Siddique Rahman, aged about 44 years, Deputy Manager (Accounts), Raymond Limited, Cement Division, Gopal Nagar, Tahsil Janjgir, District Bilaspur M.P.

(2) Dipankar Sen, son of Shri S.Sen, aged about 42 years, Share-holders of M/s Raymond Ltd. resident of House No.522, Vinoba Nagar, Bilaspur, District Bilaspur M.P.

Vs.

Respondents: (1) Additional Commissioner of Commercial Tax, Sales Tax Office, Raipur M.P.



(2) Assistant Commissioner of Commercial Tax, Vikraya Kar Bhawan, Bilaspur M.P.

(3) State of Madhya Pradesh, through Secretary, Department of Commerce and Industries, Govt. of M.P., Bhopal M.P.

Respon-dents : (4) state level Comittee for Eligibility certificate, Through the commissioner of Sales Tax-cum-Ex of-ficio Chairman of the committee, officer of the commissioner of commercial Tax,Indore District Indore M.P.

(5) General Manager, District Industries Centre, Bilaspur, District Bilaspur M.P.

WRIT PETITION UNDER ARTS.226/227 CONSTITUIION OF INDIA

DETAILS OF WRIT PETITION

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(21)

HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM : Hon'ble Shri A.K. Patnaik, C.J.
& Hon'ble Shri Sunil Kumar Sinha, J

WRIT PETITION NO. 1965 OF 1991

M/s Raymond Cement Works.

Versus

Assistant Commissioner of Sales Tax,
Bilaspur & others.

WRIT PETITION NO. 4294 OF 1992

M/s Raymond Cement Works.

Versus

Assistant Commissioner of Sales Tax,
Bilaspur & others.

WRIT PETITION NO. 1750 OF 1991

M/s Raymond Cement Works.

Versus

The General Manager, District Industries Centre,
Bilaspur & others.

WRIT PETITION NO. 1041 OF 1998

M/s Raymond Limited Cement Division, Mumbai
& another

Versus

Additional Commissioner of Commercial Tax,
Raipur & others.

Present : Mr. S.P. Sharma, learned counsel for the petitioner.

Mr. V.V.S. Murthy, learned Dy. Advocate General for the State of Chhattisgarh/respondents along with the Officers Mr. L.R. Rajput, Dy. Commissioner and Mr. G.R. Bangre, Assistant Commissioner, Commercial Tax Department, Bilaspur.

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ORDER

(Passed on 28th June, 2005)

The following order of the Court was passed by **A.K. Patnaik, C.J :**

The petitioner a company registered under the Companies Act, 1956, set-up a plant for manufacture of Cement at Gopalnagar, Bilaspur and was registered as a dealer under the Madhya Pradesh General Sales Tax Act 1958 and the Central Sales Tax Act 1956. In exercise of powers under Section 51 read with Section 22-D of the Madhya Pradesh General Sales Tax, 1958 and Section 13 of the Central Sales Tax Act, 1956, the State Government of Madhya Pradesh made the Madhya Pradesh Deferment of Payment of Tax Rules, 1986 (hereinafter referred to as ***"the Rules"***). Rule 3 (1) (c) of the Rules provided that an industrial unit other than a unit specified in Rule 11 of the Rules covered by any of the categories specified in Section 22-D of the Madhya Pradesh General Sales Tax Act, 1958 and engaged in manufacture and sale of any goods, undertaking substantial expansion shall be eligible to avail of the facility of deferment of payment of tax. Sub-rule 3 (2) (c) of the Rules provided that such an industrial unit undertaking substantial expansion shall be eligible to avail of the facility of deferment of payment of tax payable by it under the Madhya Pradesh General Sales Tax Act 1958 in respect of the sales of only those goods produced or manufactured by it the production of which is in excess of 90%, of its original licensed or registered capacity. Rule 4 (c) of the Rules provided that an industrial unit undertaking substantial expansion shall be eligible to defer the payment of tax payable by it for the period specified in coloumn (3) in respect of the categories of industrial units in items 2 (ii) of the Schedule to the notification dated 16-10-1986 depending upon the category to which the industrial unit

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belongs and the category of the district in which it is situated. Rule 5 of the said Rules provided the period of deferment of payment of tax for a period 10 years commencing from the year to which the tax, payment of which is being deferred, relates. Rule 7 of the Rules provided for application for grant of eligibility certificate. Rule 8 of the Rules provided for filing of the returns by the industrial unit availing the facility of deferment of payment of tax under the Rules. Rule 9 of the Rules provided for assessment of tax of the industrial units. Rule 12 of the Rules provided that the Rules shall mutatis mutandis apply to the tax levied and collected under the Central Sales Tax Act, 1956 subject to the modifications mentioned therein.

2. The petitioner's case in this batch of writ petitions is that it undertook the substantial expansion of its industrial unit and was thus entitled to deferment of payment of sales tax both under the Madhya Pradesh General Sales Tax Act, 1958 and under the Central Sales Tax Act, 1956 for a period of 10 years as provided in Rule 5 of the Rules quoted above. Accordingly, the petitioner applied on 10.02.1987 for grant of eligibility certificate under Rule 7 of the Rules, but by order dated 15.04.1991, the petitioner was informed that it was not entitled to an eligibility certificate on the ground that it commenced the commercial production prior to 1st August, 1986 and under the Rules only those industrial units undertaking substantial expansion and commenced commercial production under the expanded capacity on or prior to 1st August, 1986 were entitled to deferment of payment of sales tax. The petitioner, has therefore filed Writ Petition No.1750 of 1991 challenging the order dated 15.04.1991 passed by the Under Secretary of the Industrial Department of Madhya Pradesh and praying for declaration that

the petitioner was entitled to grant of eligibility certificate for deferment of payment of sales tax in respect of the expanded capacity.

3. Since the petitioner was refused deferment of payment of sales tax under the Rules, notices of demand were served on the petitioner for payment of sales tax under the Madhya Pradesh General Sales Tax Act, 1958 as well as under the Central Sales Tax Act, 1956. The petitioner has, therefore, filed Writ Petitions No.1965 of 1991, 4294 of 1992 and 1041 of 1998 for quashing of assessments and demands made by the Sales Tax Authorities under the Madhya Pradesh General Sales Tax Act, 1958 and under the Central Sales Tax Act, 1956 for different periods.

4. Mr. B.P. Sharma, learned counsel appearing for the petitioner vehemently submitted that the documentary evidence annexed to the writ petition in W.P.No.1750 of 1991 and in particular Annexure P-7, P-8 and P-9 annexed to the writ petition would show that the petitioner commenced commercial production after 1st August, 1986 and that the Managing Director, M.P.A.K.V.N., has, in fact, recommended the case of the petitioner for eligibility certificate under the Rules for deferment of payment of sales tax, which is evident from Annexure R-V. He further submitted that before passing the impugned order dated 15.04.1991 the Industrial Department should have given an opportunity of hearing to the petitioner and the petitioner would have produced material to show that it commenced commercial production in the expanded capacity after 1st August, 1986. He further submitted that as per the circular issued by the Government on 10.06.1985, the commercial production is to be taken only after six months of the date of commencement of the trial production, but in the order dated 15-04-1991 appears to have taken the month of the trial production has been taken as the month of commercial production.

5. Mr. V.V.S. Murthy, learned Dy. Advocate General, on the other hand, relying on the averments in the reply filed by the respondents submitted that from the figures of the raw-material & electricity and the figures of output given by the industrial unit of the petitioner, it would be clear that there was an upward trend in production in the industrial unit of the petitioner from January 1986 and, therefore, the respondents were justified in taking the month of January, 1986 as the month of starting of commercial production in the industrial unit of the petitioner.

6. We need not go into aforesaid controversy between the parties as to when the petitioner actually started commercial production in its expanded capacity because under Rule 5 of the Rules quoted above the period of deferment of payment of tax was to be for a period of 10 years commencing from the year to which the tax, payment of which is being deferred, relates and that period of 10 years even for the seventh year for which the petitioner claims to be eligible for deferment is already over. In other words, assuming that the petitioner started commercial production in its expanded capacity after 1st August, 1986, as claimed by the petitioner, the petitioner would have been entitled to deferment of sales tax under the Madhya Pradesh Sales Tax Act, 1958 and under the Central Sales Tax Act, 1956 for the accounting years 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, 1991-1992 and 1992-1993 up to 10 years respectively i.e. 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002 and 2002-2003. Hence, even if the petitioner's case is accepted, the petitioner was to pay back the entire tax, which is deferred under the Rules by 2003-2004. This would also be clear from the certificate of eligibility for availing facility of deferment of payment of

tax in FORM-C prescribed under Rule 7 of the Rules, relevant portion of which is quoted herein below:

> " The payment of the tax payable by the dealer for each year shall be deferred for a period of ten years. The tax payable by the dealer for each year shall be paid by him as indicated below :
>
> | S.No. | Accounting year | Year of deposit |
> |---|---|---|
> | (1) | (2) | (3) " |

Further Rule 9 of the Rules provided that after the facility of deferment of payment of tax availed of in accordance with the Rules and the Act, the assessing authority shall serve upon the unit the assessment order and notice of demand under Rule 27 of the Madhya Pradesh General Sales Tax Rules 1959 and shall indicate in the said notice the date by which the payment of tax is to be made. The said Rule 9 of the Rules is quoted herein below :

> **"9. Assessment of tax.** – The assessment of tax of any industrial unit specified in sub-rule (1) of rule 3 availing of the facility of deferment of payment of tax shall, for every year for which the said facility has been availed of, be made in accordance with the provisions of the Act. The assessing authority shall thereafter serve upon the said unit the assessment order and a notice of demand under Rule 27 of the Rules and shall indicate in the said notice the date by which payment of tax is to be made."

Thus, even if the petitioner was issued with an eligibility certificate, since the 10 years period of deferment for the 7 years beginning from the date of commercial production is over, the petitioner would be liable to pay the

tax as assessed under the Madhya Pradesh General Sales Tax Act, 1958 and the Central Sales Tax Act, 1956.

7. By the interim order passed by this Court and modified by the Supreme Court in this batch of writ petitions, the petitioner was asked to deposit a portion of the impugned demands and to furnish bank guarantee for a portion of the impugned demands and recovery of the balance was stayed. The petitioner, will, therefore, have to pay the balance of the impugned demands in accordance with the provisions of Rule 9 of the Rules read with the provisions of the Madhya Pradesh General Sales Tax Act 1958 and the rules made thereunder as well as the Central Sales Tax Act, 1956 and the rules made thereunder.

8. Regarding penalty, it has been brought to our notice that under Section 22 (4-B) of the Madhya Pradesh General Sales Tax Act, 1958 where a dealer does not pay the tax assessed on him and the dealer has not obtained any order under Sub-section (4-A) granting time to pay the tax, the Commissioner can after giving the dealer a reasonable opportunity of being heard, direct such dealer to pay by way of penalty, a sum equal to 2% of the amount of tax due, for every month, for the period for which the payment has been delayed. But in this case, the case of the petitioner was that it was entitled to eligibility certificate for deferment of sales tax under the Madhya Pradesh General Sales Tax Act, 1958 and under the Central Sales Tax Act, 1956 and that such benefit was denied to the petitioner on the ground that the petitioner started the commercial production in its expanded capacity prior to 1st August, 1986. Petitioner's further case is that despite the earlier recommendation made by the Managing Director, M.P.A.K.V.N., recommending such eligibility certificate, the same was denied to the petitioner by the impugned order

dated 15-04-1991 without affording the opportunity of hearing to the petitioner to show that the petitioner actually started the commercial production in its expanded capacity after 1st August, 1986 and not before 1st August, 1986. After considering the case of the petitioner, the High Court as well as the Supreme Court passed interim orders staying the impugned demands. Moreover, we would have quashed the order dated 15-04-1991 and remanded the matter back to the competent authority of the Industry Department to grant an opportunity of hearing to the petitioner and pass fresh orders, but we are of the view that no useful purpose would be served by quashing the order and sending the matter back because even if the claim of the petitioner for deferment of sales tax was allowed, the petitioner would now be liable to pay back the tax, the period of deferment of tax being already over. In the event we would have quashed the order, the entire levy of tax with penalty and interest would have also been quashed by this Court. We are, therefore, of the considered opinion that no penalty or interest will be recovered from the petitioner and only tax as due and payable will be recovered from the petitioner as indicated above.

9. Accordingly, these writ petitions are disposed with a direction that the Registry of this Court shall, within one month from today, pay to the Sales Tax Officer, Bilaspur the amount already deposited by the petitioner together with interest. The balance amount of the tax that will be payable by the petitioner after adjustment of the amount received from the Registry of this Court, will be worked out by the Sales Tax Officer and notices of demand for the balance tax will be served on the petitioner in accordance with the Rule 9 of the Rules read with Rule 27 of the Madhya Pradesh General Sales Tax Rules 1959 as provided in Rule 9 of the Rules and will

be recovered from the petitioner. The bank guarantees furnished by the petitioner pursuant to interim orders passed by this Court as modified by the orders of the Supreme Court will be released by this Court only after the petitioner pays the entire amount of tax as demanded by the Sales Tax Officer, Bilaspur and the petitioner files an application for release of the bank guarantees after payment of such tax.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

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